



**Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS**

In the Matter of Claims Against the Dealer Bond
of Swenson & Son, Inc.

Case No.: TR-01-0027

FINAL DECISION

On February 1, 2001, Renee Vega filed a claim with the Wisconsin Department of Transportation (Department) against the motor vehicle dealer bond of Swenson & Son, Inc. The claim along with documents gathered by the Department in its investigation of the claim was referred to the Division of Hearings and Appeals. A Preliminary Determination based on the documentation contained in the file and required by Wis. Admin. Code, § Trans 140.26(4)(a) was issued on October 19, 2001. On November 13, 2001, Ms. Vega filed an objection to the Preliminary Determination pursuant to Wis. Admin. Code § Trans 140.26(5)(b). Pursuant to due notice a hearing under Wis. Admin. Code § Trans 140.26(6) was conducted in this matter on December 13, 2001, in Muscoda, Wisconsin, Mark J. Kaiser, Administrative Law Judge, presiding.

In accordance with Wis. Stat. § 227.47 and 227.53(1)(c) the PARTIES to this proceeding are certified as follows:

Ms. Renee Vega
246 E. University #3
Muscoda, WI 53573

Swenson & Son, Inc.
1702 Elm Street
Boscobel, WI 53805

Capitol Indemnity Corporation
4610 University Avenue
P. O. Box 5900
Madison, WI 53705

The Preliminary Determination issued in this matter found the Dealer violated Wis. Admin. Code § Trans 139.04(6)(a)1 by failing to disclose the subject vehicle's history as a rental vehicle. However, the problems complained of by Ms. Vega were not related to this violation. The problem that led Ms. Vega to file a complaint against the Dealer was the discovery that the vehicle had a bent frame. The discovery that the vehicle had a bent frame was made eleven

months after Ms. Vega purchased the vehicle from the Dealer. After consideration of the evidence presented at the hearing, there is still no basis to find that the frame of the vehicle was bent at the time it was sold by the Dealer.

At the hearing, Ms. Vega reiterated that she would not have purchased this vehicle if she had been told that it had a history as a rental vehicle. She alleged that it has numerous problems that she attributes to its use as a rental vehicle. On December 26, 2001, Ms. Vega submitted copies of invoices for repairs made to the vehicle. Many of the invoices are for routine maintenance. None of the repairs made to the vehicle appear to be clearly inconsistent for a vehicle of the age and with the mileage of the subject vehicle. After considering the evidence presented by the parties at the hearing in this matter, there is no reason to modify the Preliminary Determination issued in this matter. The Findings of Fact, Conclusions of Law, and Order following are unchanged from the Preliminary Determination.

FINDINGS OF FACT

1. Swenson & Son, Inc. (Dealer) is a motor vehicle dealer licensed by the Wisconsin Department of Transportation pursuant to Wis. Stat. § 218.0111. The Dealer's facilities are located at 1702 Elm Street, Boscobel, Wisconsin.

2. The Dealer had a surety bond in force from May 31, 1995. (Bond No. 585555 from Capitol Indemnity Corporation).

3. On August 6, 1999, Renee Vega purchased a 1994 Buick LeSabre, vehicle identification number IG4HP5215RH26198, from the Dealer. Ms. Vega paid \$9,953.50, including sales tax and registration fees, for the vehicle. The Wisconsin Buyers Guide displayed on the vehicle indicated no problems with any of the components listed on the disclosure form and that all listed equipment was legal. Specifically, the Wisconsin Buyers Guide disclosed no evidence of repairs to the vehicle's frame and that the frame was legal. Additionally, the Dealer disclosed that the vehicle's use history was "personal use."

4. On July 3, 2000, Ms. Vega took the vehicle to Phil's Service in Muscoda for a safety inspection. During the inspection, the mechanic discovered the frame of the vehicle was bent and the vehicle had been in an accident. On November 29, 2000, Ms. Vega filed a complaint against the Dealer with the Wisconsin Department of Transportation – Dealer Section (Dealer Section).

5. In the course of his investigation, the investigator from the Dealer Section determined that the vehicle had been used as a rental vehicle. The Dealer did not disclose this use history on the Wisconsin Buyers Guide. The investigator also contacted the prior owner of the vehicle and his mechanic. Both reported that the vehicle did not have a bent frame when it was used as a trade-in with the Dealer.

6. On February 1, 2001, Ms. Vega filed a claim against the surety bond of the Dealer. The amount of the claim is \$7,000. Ms. Vega did not itemize her claim, but states she believes the vehicle is worth at least \$7,000 less than she paid for it.

7. The bond claim was filed within three years of the ending date of the period the Capitol Indemnity Corporation bond was in effect and is, therefore, a timely claim.

8. The loss sustained by Renee Vega was not caused by an act of the Dealer that would be grounds for the suspension or revocation of its motor vehicle dealer license. Accordingly, the claim is now allowable.

DISCUSSION

The procedure for determining claims against dealer bonds is set forth at Wis. Admin. Code Chapter Trans 140, Subchapter II. Wis. Admin. Code § Trans 140.21(1) provides in relevant part:

A claim is an allowable claim if it satisfies each of the following requirements and is not excluded by sub. (2) or (3):

(a) The claim shall be for monetary damages in the amount of an actual loss suffered by the claimant.

(b) The claim arose during the period covered by the security.

(c) The claimant's loss shall be caused by an act of the licensee, or the [licensee's] agents or employees, which is grounds for suspension or revocation of any of the following:

1. A salesperson license or a motor vehicle dealer license, in the case of a secured salesperson or motor vehicle dealer, pursuant to s. 218.01(3)(a) 1. to 14., 18. to 21., 25. or 27. to 31., Stats. [*recodified as §§ 218.0116(1)(a) to (gm), (im) to (k), (m), and (n) to (p) in Wis. Stats., (1999-2000)*].

. . . .

(d) The claim must be made within 3 years of the last day of the period covered by the security. The department shall not approve or accept any surety bond or letter of credit which provides for a lesser period of protection.

Accordingly, to allow the claim, a finding must be made that the Dealer violated one of the sections of Wis. Stat. § 218.0116(1), identified in Wis. Admin. Code § Trans 140.21(1)(c)1, and that the violation caused the loss claimed.

Wis. Admin. Code § Trans 139.04(6)(a)1 requires a dealer to disclose the material history of a vehicle including whether the vehicle has been used as a rental vehicle. The Dealer failed to do so in this case. Ms. Vega has stated that she would not have purchased the subject vehicle if she had been informed that it had been a rental vehicle; however, the loss she claims is not related to the vehicle's history as a rental vehicle. Ms. Vega does not indicate that she had any problems with the vehicle until the bent frame was discovered eleven months after she purchased the vehicle. All of Ms. Vega's complaints about the vehicle are related to the bent frame.

The investigator from the Dealer Section established that the vehicle did not have a bent frame when it was traded in to the Dealer. It is unknown how or when the vehicle's frame was bent; however, there is no evidence that the frame was bent when Ms. Vega purchased it from the Dealer. The Dealer's failure to accurately disclose the vehicle's prior use as a rental vehicle did not cause the loss sustained by Ms. Vega.

CONCLUSIONS OF LAW

1. Renee Vega's claim arose on August 6, 1999, the date she purchased the subject automobile from Swenson & Son, Inc. The surety bond issued to Swenson & Son, Inc. by Capitol Indemnity Corporation was in effect at this time. The claim arose during the period covered by the surety bond.

2. Renee Vega filed a claim against the motor vehicle dealer bond of Swenson & Son, Inc., on February 1, 2001. The bond claim was filed within three years of the last day of the period covered by the surety bond. Pursuant to Wis. Admin. Code § Trans 140.21(1)(d), the claim is timely.

3. The loss sustained by Renee Vega was not caused by an act of Swenson & Son, Inc., which would be grounds for suspension or revocation of its motor vehicle dealer license. Pursuant to Wis. Admin. Code § 140.21(1)(c), the claim is not allowable.

4. The Division of Hearings and Appeals has authority to issue the following order.

ORDER

The claim filed by Renee Vega against the motor vehicle dealer bond of Swenson & Son, Inc., is DENIED.

Dated at Madison, Wisconsin on January 11, 2002.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
5005 University Avenue, Suite 201
Madison, Wisconsin 53705-5400
Telephone: (608) 266-7709
FAX: (608) 264-9885

By: _____
Mark J. Kaiser
Administrative Law Judge

NOTICE

Set out below is a list of alternative methods available to persons who may wish to obtain review of the attached decision of the Division. This notice is provided to insure compliance with Wis. Stat. § 227.48 and sets out the rights of any party to this proceeding to petition for rehearing and administrative or judicial review of an adverse decision.

1. Any person aggrieved by the attached order may within twenty (20) days after service of such order or decision file with the Division of Hearings and Appeals a written petition for rehearing pursuant to Wis. Stat. § 227.49. Rehearing may only be granted for those reasons set out in Wis. Stat. § 227.49(3). A petition under this section is not a prerequisite for judicial review under Wis. Stat. §§ 227.52 and 227.53.

2. Any person aggrieved by the attached decision which adversely affects the substantial interests of such person by action or inaction, affirmative or negative in form is entitled to judicial review by filing a petition therefore in accordance with the provisions of Wis. Stat. §§ 227.52 and 227.53. Said petition must be filed within thirty (30) days after service of the agency decision sought to be reviewed. If a rehearing is requested as noted in paragraph (1) above, any party seeking judicial review shall serve and file a petition for review within thirty (30) days after service of the order disposing of the rehearing application or within thirty (30) days after final disposition by operation of law. Any petition for judicial review shall name the Division of Hearings and Appeals as the respondent. Persons desiring to file for judicial review are advised to closely examine all provisions of Wis. Stat. §§ 227.52 and 227.53 to insure strict compliance with all its requirements.